HON'BLE MR JUSTICE A. GOPAL REDDY

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WRIT PETITION NO.17272 OF 1994

DATE:27.02.2006

Between:

S.R.M.T. Limited, Kakinada,

Rep. by its Managing Director

..... PETITIONER

AND

Government of A.P., rep. by its

Secretary, Food & Agriculture Department,

Secretariat, Hyderabad. And another.

.....RESPONDENTS

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HON'BLE MR JUSTICE A. GOPAL REDDY

W.P. No.17272 OF 1994

ORDER:

Petitioner, a public limited company carrying on the business of transporting goods in lorries from one destination to the other, filed this writ petition for issuance of a mandamus restraining the respondents from enforcing Insecticides Act, 1968 on the petitioner company for obtaining a licence.

The case of the petitioner is that it undertakes to transport various goods from one destination to other as per the directions issued by the constituents. The Insecticides Act, 1968 (for short 'the Act') has been enacted to regulate the import, manufacture, sale, transport, distribution and use of insecticides with a view to prevent risk to human beings or animals etc. Sections 4,7,8 and 36 came into force on 1.3.1971 while other provisions came into force on 1.8.1971. According to the petitioner, any person desiring to manufacture or to sell, stock or exhibit for sale or distribute any insecticide, is under obligation to obtain a licence under Section 13 of the Act, but not the transporters, who transport the goods from one destination to other as per the instructions of the constituents. In view of the same, the impugned notices issued by the Assistant Director of Agriculture (R), Nandyal, Insecticides Inspector and Joint Director of Macharla and Guntur insisting the petitioner for obtaining a licence under the Act are unwarranted and they cannot insist the

petitioner for obtaining the licence.

On behalf of the respondents, the Deputy Director of Agriculture (Plant Protection) has filed a counter affidavit stating that the Act is enacted not only to regulate the import, manufacture or sale or distribution of insecticides but also to regulate the transport of insecticides, which is clear from the very preamble of the Act. It is alleged that some of the transporting agencies are transporting pesticides with other consumable articles which are not safe for human beings. Further, it is stated that some of the unscrupulous elements, who are dealing with sub-standard pesticides are using the go- downs of the transporters for storing their sub-standard pesticides for longer period to avoid inspection from the inspecting officers and they are getting the stocks released in piece-meal basis and pushing the same into the market. The transporters are also not maintaining the clear addresses of the consignor and consignee. As the transporting agencies are stocking the pesticides in the go-downs of the transporters for a limited or longer period, they are required to obtain licence under Section 13 of the Act irrespective of duration of stocking the pesticides. In that view of the matter, notices were issued to the transport companies for obtaining licence.

Learned counsel for the petitioner contends that under Section 13 of the Act, it is only the manufacturers or the parsons who sells or stocks or exhibits the pesticides for sale or distribution, are under obligation to make an application to the licensing authority for grant of licence. He further contends that under Section 18 of the Act without obtaining a valid licence no person shall sell, stock or exhibit for sale, distribute, [transport, use, or cause to be, used] by any worker any insecticide, which is not registered under the Act. Section 9 of the Act envisages registration of insecticides, according to which, any person desiring to import or manufacture any insecticide may apply to the Registration Committee for the registration of such insecticide by making a separate application for each such insecticide. In view of the same, the learned counsel for the petitioner contends that insisting the petitioner, which is only a transport company, to obtain a licence is arbitrary and illegal since the same is not contemplated under the Act. Finally, he contends that merely because some unscrupulous elements are dealing with sub-standard pesticides or using the go-downs of transporters for stocking their pesticides, the same is not a ground for insisting the petitioner for obtaining the licence.

On the other hand, the learned Government Pleader appearing on behalf of

the respondents contends that the preamble of the Act itself indicates that the Act was enacted to regulate the import, manufacture, sale, transport, distribution and use of insecticides. He contends that since it was noticed by the authorities that some of the unscrupulous elements are storing their sub-standard insecticides in the go-downs of the transporters for longer period with a view to escape from the inspection, the impugned notices were issued to the petitioner and other transporting companies for obtaining a valid licence, and further as the impugned notices are only in the nature of intimation, it is open for the petitioner to approach the authorities explaining the circumstances, under which, it is not under obligation to obtain the licence, but as against the impugned notices, the writ petition cannot be maintainable.

Once the respondents filed a counter affidavit making their stand clear that the transporter is under obligation to obtain a licence, the submission that the petitioner may approach the authorities of the respondents and file a representation explaining its stand that they are not under obligation to obtain licence, will not serve any purpose. In order to resolve the controversy, it is necessary to notice the preamble and relevant sections, which make mandatory for obtaining the licence under the Act.

Preamble of the Act reads as under:

> "The Insecticides Act, 1968 is an Act to regulate the import, manufacture, sale, transport, distribution and use of insecticides with a view to prevent risk to human beings or animals and matters connected therewith. ....."

Section 9 of the Act obligates registration of insecticides by a person desiring to import or manufacture any insecticides by applying to the Registration Committee for the registration of such insecticides in a separate application for each such insecticide. Whereas, Section 13 of the Act deals with grant of licence in favour of a person desiring to manufacture or to sell, stock or exhibit for sale or distribute any insecticide, [or to undertake commercial pest control operation with the use of any insecticide] on making an application to the licencing official for grant of licence and the application shall be in such form and shall contain such particulars as may be prescribed and on receipt of such application, the licencing officer may grant licence in such form such condition and on payment of such fees and such licence granting shall be valid for the period specified in the licence which can be renewable from time to time for such a period on payment of fee prescribed and incidental thereto.

Section 18 of the Act prohibits sale, certain pesticides, which reads as under:

"18. Prohibition of sale, etc., of certain insecticides:-

(1) No person shall, himself or by any person on his behalf, sell, stock or exhibit for sale, distribute [transport, use, or cause to be, used] by any worker,-

a. any insecticide which is not registered under this Act;

b. any insecticide, the sale, distribution or use of which is for the time being prohibited under Section 27;

c. any insecticide in contravention of any other provision of this Act or of any rule made thereunder.

(2) No person shall, himself or by any person on his behalf, sell, stock or exhibit for sale or distribute [or use for commercial pest control operations] any insecticide except under, any in accordance with the conditions of, a licence issued for such purpose under this Act.

Explanation:- ....."

For due implementation of the Act, the Insecticides Rules, 1971 are framed. Rule 6 provides the manner of registration, whereas, Rule 9 deals with grant of licence, which prescribes an application to be made for grant or renewal of the licence to manufacture any insecticides in form No.3 or form No.4, as the case may be, and licence to manufacture shall be issued in form No.5, which is subject to the conditions mentioned thereunder. Nowhere in the Act it is stated that the transporter who undertakes to transport the insecticides on behalf of the manufacturer or stockiest, who stocks the insecticides for sale or distribution, is under obligation to obtain a licence. Merely because the word 'transport' is used in the preamble or under Section 18 of the Act, does not control the transportation of the insecticides by a transporter. Rule 39 of the Insecticides Rules, 1971 prescribe the safeguards, according to which, persons handling insecticides during its manufacture, formulation, transport, distribution or application, shall be adequately protected with appropriate clothing. A combined reading of Section 18 and Rule 39, it is clear that no person shall, himself or any person on his behalf, sell, stock, or exhibit for sale, distribute; transport any insecticide which is not registered under the Act, any

insecticide, the sale, distribution or use of which is prohibited under Section 27 except, and in accordance with the conditions of licence issued. From the said Rule, it is clear that it is obligatory on the part of the manufacturer or stockiest, who undertakes to transport the insecticides from the place of manufacture to the place of stock to take such measures of protection. In the absence of any specific provision making obligatory on the part of the transporter, who undertakes transport on behalf of a licencee for obtaining a licence, he cannot be insisted for obtaining a licence. Further, in the counter affidavit filed by the respondents no specific allegation is made against the petitioner, on the other hand, general allegations are made taking the stand some of the unscrupulous elements were storing their sub-standard insecticides in the go-downs of the transporters for longer period with a view to escape from the inspection. Merely because some of the unscrupulous elements were storing their sub-standard insecticides in the go-downs of the transporters is not a ground to insist the petitioner for obtaining the licence under the Act, when the Act does not prescribe such obtaining of the licence. In view of the same, unless the Act is suitably amended, the respondents cannot insist the petitioner to obtain a licence under the Act.

Accordingly, the Writ Petition is allowed directing the respondents not to insist the petitioner for obtaining the licence under the Act. No costs.

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A. GOPAL REDDY, J

27th FEBRUARY, 2006.

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